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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92032341
<b>Party</b>	Defendant MICHEL FARAH ,
<b>Correspondence Address</b>	David M. Rogero David M. Rogero, P.A. 2600 Douglas Road, Suite 600 Coral Gables, FL 33134 UNITED STATES dmrogero@dmrpa.com
<b>Submission</b>	Registrant's Response to Petitioner's Motion to Strike Testimony
<b>Filer's Name</b>	David M. Rogero
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<b>Signature</b>	/s/David M. Rogero/
<b>Date</b>	05/19/2005
<b>Attachments</b>	Response to motion to strike 051905.pdf ( 2 pages )

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESAPHARMA),	)	Cancellation No. 32,341
	)	Registration No. 2,447,970
Petitioner,	)	Mark: OMIC PLUS
	)	
v.	)	
	)	
MICHEL FARAH,	)	
	)	
Registrant.	)	
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REGISTRANT’S RESPONSE TO PETITIONER’S MOTION TO STRIKE TESTIMONY

Registrant, Michel Farah, opposes the Petitioner’s motion to strike his testimony. Petitioner bases its motion on the claim that the testimony was taken after Registrant’s testimony period had closed. At the time the taking of the testimony was noticed, however, this Board had not ruled upon Registrant’s motions for enlargement of time, and at the time Registrant’s testimony was taken, Registrant was unaware of the order, entered the previous day, granting the first two such requests but denying the third. Registrant’s motion for reconsideration of that part of the order denying the last motion for enlargement of time remains pending, and Registrant refers the Board to the arguments asserted in the pending motion for reconsideration.

Counsel for Petitioner also states that he was unavailable on the date Registrant’s testimony was taken. Undersigned counsel apologizes for overlooking counsel’s statement in an earlier paper that he would be out of the country. The oversight was unintentional, and undersigned counsel received no objection from Petitioner’s counsel’s office when the taking of the testimony on March 29 was noticed. Registrant has previously offered, and reiterates the offer, to appear for cross examination by Petitioner’s counsel, if desired.

In this procedural dispute, the material facts relevant to the issues raised in the petition push the equities in favor of the Registrant. The testimony which Petitioner seeks to strike establishes Registrant's use of the mark in commerce long before Petitioner's claimed use. Thus, Petitioner can only prevail in this cancellation proceeding through a procedural device. The potential prejudice to the Registrant is clear. And as the junior user, Petitioner should not be permitted to prevail by avoiding the truth.

Respectfully submitted,

/s/David M. Rogero/  
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Attorney for Registrant Michel Farah

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Reconsideration was sent by first class mail with proper postage affixed, the 19th day of May, 2005, to the following counsel for petitioner:

Donald L. Dennison  
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/s/David M. Rogero/